IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 118 of 2001
to
TAX APPEAL No 121 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DR. K.M. SHAH

Versus

DY. C.I.T.

Appearance:

1. TAX APPEAL No. 118 to 121 of 2001
MR KC PATEL Senior Counsel instructed by
MR RK PATEL and MR BD KARIA for Petitioner No. 1
MR TANVISH U BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 07/05/2004

COMMON C.A.V. JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

These four appeals are filed by the assessee

under Section 27A of the Wealth-tax Act, 1957 against the judgment and order dated 9.1.2001 passed by the Income-tax Appellate Tribunal, Ahmedabad in Wealth-tax Appeal Nos. 55 to 58 of 1999 for assessment years 1991-92 to 1994-95. Since the appeals involve common questions of law and fact, by consent of the learned counsel for the parties, the appeals were heard together and are being disposed of by this common judgment.

2. The appeals were admitted for considering the following substantial questions of law:-

(i) Whether on the facts and in the circumstances of the case, the Tribunal substantially erred in law in dismissing the appeal of the appellant without taking into consideration the relevant material on record and without any 'speaking order' on merits?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal substantially erred in law in interpreting the provisions of the Wealth-tax Act with regard to definition of 'Urban Land' in Section 2(ea) clause (v) and Explanation to Section 2(ea) which stipulates that the area of land occupied by a building does not form part of Urban Land?

(iii) Whether in the facts and circumstances of the case, the Tribunal was right in law in rejecting the contention of the assessee that by virtue of the provision of Section 7(2) of the Wealth-tax Act, 1957, as the property under consideration was exclusively used by the assessee throughout the period of twelve months immediately preceding the valuation date, its value was to be determined at the option of the assessee in the manner laid down under in Schedule III to the Act as on the 1st day of April 1971?

F A C T S

3. The facts leading to filing of these appeals, briefly stated, and as found by the Tribunal and evident from the map of the property on record, are as under:-

3.1 The appellant- Dr KM Shah had purchased land bearing Revenue Survey No.114, Final Plot No.417/1 of proposed Town Planning Scheme No.3 in Ellisbridge, Ahmedabad admeasuring 2893 sq.mts. in 1954 in the name of his two minor sons Mrugesh and Bhadresh. At the time

of finalization of Town Planning Scheme, the area of the plot became 2970.76 sq.mts. Thereafter, a lay out plan of the said land was prepared which was approved by the Ahmedabad Municipal Corporation on 26.10.1967. In the said lay out plan, the land was sub-plotted into four sub-plots as under:-

Sub-plot No.	Area in sq.mts.
417/1/1	1176.43
417/1/2	532.61
417/1/3	505.02
417/1/4	451.51
Cut in road	305.19
	2970.76

On 30.1.1968, Dr KM Shah executed a gift deed on behalf of his above named two sons gifting sub-plot No.417/1/3 to three daughters of Dr KM Shah. A residential bungalow was constructed on sub-plot No.417/1/1 in 1968 with the floor area of 351 sq.mtrs. on the ground floor plus construction on a part of the first floor.

3.2 In the year 1994, Bhadresh, one of the sons of the appellant, filed a suit in the City Civil Court against the appellant and against Mrugesh K Shah claiming the aforesaid property to be a joint family property and prayed for partition of the said property. The City Civil Court appointed an Arbitrator who gave an award dated 30.3.1995 holding that the property in question was HUF property and proposing a partition of the same by re-locating the sub-plots in Final Plot No.417/1. The Arbitrator allotted sub-plot No.417/1/1 to Bhadresh K Shah, sub-plot No.417/1/2 to appellant Dr KM Shah and 417/1/4 to Mrugesh K Shah. As per the re-location done by the Arbitrator, each of these three persons got an area of 818 sq.mts.. Of course, sub-plot No.417/1/1 allotted to Bhadresh K Shah had the residential bungalow constructed on it. On the basis of the aforesaid award, the City Civil Court passed decree dated 17.7.1995 in terms of the award.

3.3 The appellant, his two sons and his daughters entered into an agreement of sale dated 1.4.1995 for selling the entire property being Final Plot No.417/1 to the promoters of proposed Sugam Shops & Cooperative Housing Society etc.. The sale deeds were executed on 20.4.1996 showing sale consideration of

Rs.6,54,71,500/(rounded off to Rs.6.55 Crores for convenience for the purposes of discussion in these appeals). The consideration was divided between the appellant and his two sons equally, that is, each one of them got nearly Rs.1.81 Crores and the three daughters got an amount of Rs.37.24 lakhs each.

3.4 The aforesaid property being Final Plot No.417/1 having four sub-plots and having a residential bungalow on sub-plot No.417/1/1 was shown as a property of appellant-Dr KM Shah as an individual in his income-tax and wealth-tax returns. In the wealth-tax returns of the appellant, the value of the said property was being assessed under Section 7(2) read with Rules 3 to 6 in Schedule III to the Wealth-tax Act, 1958 (the Act) at Rs.22593/- as on 1.4.1971 and was being claimed as exempt under Section 5(1)(iv) of the Act.

3.5 The Assessing Officer completed the assessment for all the four assessment years under appeal (A.Ys. 1991-92 to 1994-95) by including the property as belonging to the appellant in his individual capacity, as was also originally shown by the appellant before the arbitration award dated 30.3.1995. The Assessing Officer held that the bungalow built on sub-plot No.417/1/1 with the land of the said sub-plot qualified for deduction under Section 5(1)(iv) or (vi), as the case may be, being one house belonging to the assessee. The Assessing Officer further held that sub-plot Nos.417/1/2 and 417/1/4 were "urban land" as defined in the Wealth-tax Act. He got the properties in question valued through the Departmental Valuation Officer (DVO) under Section 16A of the Act and adopted the value as determined by the DVO for assessment framed for all the four relevant assessment years under appeal. The DVO gave the valuation by his report dated 15.7.1997 as under:-

Assessment Year	Sub-plot 417/1/1 (Rs.)	Sub-plots 417/1/2 and 417/1/4 taken together (rounded off to nearest lakh) (Rs.)
1991-92	3,33,420	60 lakhs
1992-93	"	137 lakhs
1993-94	"	188 lakhs

1994-95	"	221 lakhs

3.6 The assessee challenged the assessment order in appeal. The learned Commissioner of Wealth-tax (Appeals) upheld the orders of the Assessing Officer. It, however, appears that the Commissioner of Wealth-tax (Appeals) heard the appeals under the Wealth-tax Act for the A.Ys. 1991-92 to 1994-95 along with the assessee's appeal under the Gift-tax Act for A.Y. 1995-96. The controversy involved in the appeals under the Wealth-tax Act was different from the controversy involved under the Gift-tax Act. However, the Commissioner (Appeals) heard all the five appeals together and by order dated 19.3.1999 dismissed the four appeals under the Wealth-tax Act as well as the appeal under the Gift-tax Act.

3.7 The assessee challenged the orders in the appeals under the Wealth-tax Act in Wealth-tax Appeal Nos.55 to 58 of 1999 before the Income-tax Appellate Tribunal. After hearing the learned counsel for the appellant and the learned departmental representative, the Tribunal dismissed the appeals under the Wealth-tax Act by its judgment and order dated 9.1.2001. Thereafter, the appellant filed Misc. Applications for rectification in all the four appeals. In the meantime, the appellant had already filed the present tax appeals for challenging the judgment and order dated 9.1.2001. The same were, therefore, disposed of on the ground of pendency of rectification applications with liberty to revive in case the rectification applications were dismissed. The rectification applications came to be dismissed by the Tribunal's order dated 25.5.2001. Hence, the appellant was permitted to revive these appeals.

4. We are informed that the separate appeal which the appellant-assessee filed before the Income-tax Appellate Tribunal against the order dated 25.3.1999 of the Commissioner (Appeals) dismissing the appeal under the Gift-tax Act has been recently allowed by the Tribunal during pendency of the present appeals holding the property to be HUF property. However, in these appeals, we are not concerned with the controversy under the Gift-tax Act which is now decided by the Tribunal in favour of the HUF.

5. We have heard MR KC Patel, learned counsel instructed by Mr RK Patel and Mr BD Karia for the appellant. We have also heard Mr Tanvish U Bhatt, learned Standing Counsel for the revenue.

CONTENTIONS ON BEHALF OF APPELLANT

6. Mr KC Patel, learned counsel for the appellant has raised the following contentions:-

6.1 The Tribunal has not dealt with all the relevant material on record and has not given any reasons for not accepting several important contentions of the appellant and, therefore, the order under challenge is not a speaking order.

6.2.1 The Tribunal substantially erred in law in not taking into consideration all the relevant material on record. Strong reliance is placed on the sketch of the property under consideration and it is contended that when there are servant quarters in sub-plot Nos.417/1/1 and 417/1/2 and when there is a compound wall surrounding the entire property 417/1 and there are no boundaries or fencing to physically divide sub-plot No.417/1/1 from the other sub-plots, the Tribunal ought to have held that the entire property was a single property and that sub-plot Nos.417/1/2 and 417/1/4 were not required to be valued separately, but were required to be treated as a part of the same property.

Strong reliance is placed on the decision of the Calcutta High Court in Kalipada Ghosh vs. Tulsidas Dutt, AIR 1960 Cal. 467 in support of the contention that a house includes land appurtenant to the house and also on the decision of this Court in CWT vs. Shri Shrenik Kasturbhai, Wealth-tax Reference No.48 of 1987 and connected matters decided on 18.10.1995 wherein it is held that occupation of quarters by servants engaged by the owner for household chores does not militate against occupation of house by the owner for his own use as residence. It is also contended that the Tribunal has not applied the correct tests as laid down in CIT vs. Zaibunnisa Begam, (1985) 151 ITR 320 and in CIT vs. Smt. M Kalpagam, (1997) 227 ITR 733.

6.2.2 The Tribunal erred in not taking into consideration the forms filed by the appellant's sons under Section 6 of the Urban Land Ceiling Act and also the orders passed by the authorities under the Urban Land Ceiling Act and the orders passed by this Court in the proceedings under the Urban Land Ceiling Act wherein it was held that there was no excess land held by the appellant's sons.

6.2.3 Several important documents like the tax bills issued by the Ahmedabad Municipal Corporation assessing

the property as one property being plot No.417/1 have not at all been considered by the Tribunal and, therefore, the judgment under appeal is vitiated.

6.3 The property bearing No.417/1 was always treated as one property and the appellant's wealth-tax returns were also accepted in all the assessment years right from the beginning and the assessment was also made on the basis that there was only one property being plot No.417/1. The appellant had been valuing the said property as residential property as per its market value on 1st day of April 1971. There was no reason or justification on the part of the department in not accepting this valuation for the relevant four assessment years i.e. 1991-92 to 1994-95.

6.4 The Tribunal has erred in totally misconstruing the provisions of the Wealth-tax Act with regard to definition of "urban land" in Section 2(ea)(v) and Explanation (b) to Section 2(ea) which stipulates that the area of land occupied by a building does not form part of urban land.

6.5 Without prejudice to the above submissions, the Tribunal erred in not holding that the property under consideration was exclusively used by the assessee and his family members throughout the period of 12 months immediately preceding the valuation date in the relevant assessment years and, therefore, the value of the property was required to be determined at the option of the assessee in the manner laid down in Schedule III of the Act as on 1st April 1971.

6.6 In any view of the matter, the Tribunal erred in confirming the valuation adopted by the Wealth-tax Officer and confirmed by the Commissioner (Appeals) merely on the basis of the valuation made by the Departmental Valuation Officer on 15.7.1997. The DVO's report was made without considering the relevant statutory building byelaws of the Ahmedabad Municipal Corporation. While valuing the property, the Department was merely obsessed by the price fetched by the property in the financial year 1995-96 as the commercial property.

Strong reliance has been placed on the building byelaws of the Ahmedabad Municipal Corporation and particularly the byelaws laying down the minimum area for a building unit. As per the said byelaws for buildings for shopping centres, minimum area of land must be at least 1000 sq.mts. (1200 sq.yds.). The DVO has valued the land under consideration by looking at the fact that

the land under consideration as well as the other lands in the area have been sold at rates which are the rates paid by the purchasers for constructing shopping centres. Each of the two sub-plot Nos. 2 and 4 was admeasuring only about 500 sq.mts. and, therefore, the valuation was made on the basis of erroneous principles.

6.7 Amendments to Section 5(1)(iv) were made from time to time not merely to remove anomalies and practical difficulties but also to introduce some tax concessions and to remove some hardships and to provide certainty in the matter of wealth-tax assessments and to reduce litigation by incorporating rules for valuation of assets in the Wealth-tax Act itself.

Strong reliance is, therefore, placed on Circular No.559 dated 4.5.1990 containing explanatory notes to various provisions of Direct Tax Laws (Amendment) Act, 1987 particularly para 18.1 thereof.

SUBMISSIONS ON BEHALF OF REVENUE

7. On the other hand, Mr Tanvish U Bhatt, learned Standing Counsel for the revenue has supported the judgment and order of the Tribunal and has further made the following submissions:-

7.1 The judgment of the Tribunal being one of affirmance, it was not necessary for the Tribunal to give detailed reasons for accepting the findings given by the Commissioner for cogent reasons. It cannot, therefore, be said that the judgment and order of the Tribunal is not a speaking order.

7.2.1 The Tribunal has taken into consideration all the relevant material and the Tribunal has given cogent reasons for upholding the order of the Commissioner (Appeals). What is the weight to be attached to a particular piece of evidence or material on record is a matter of appreciation of evidence and the Court while exercising its power under Section 27A of the Wealth-tax Act would only consider substantial questions of law and would not enter into re-appreciation of evidence.

7.2.2 When the appellant himself had submitted a lay out plan for plot No.417/1 dividing it into four sub-plots which plan was sanctioned by the Ahmedabad Municipal Corporation on 26.10.1967 and when the said sanctioned plan was acted upon by appellant by executing gift deed on 30.1.1968 for gifting sub-plot No.417/1/3 admeasuring 505 sq.mts. in favour of the three daughters

of the appellant and when the bungalow was constructed by the appellant on sub-plot No.417/1/1 admeasuring 1176.43 sq.mts. it was not open to the assessee to contend that the lay out plan sanctioned in the year 1967 was of no consequence and that the entire land was required to be treated as a single property.

7.2.3 In the proceedings under the Urban Land Ceiling Act, it was not the case of the appellant that the land admeasuring 2959 sq.mts. was one property.

7.3 As per the settled legal position, there is no res judicata in tax matters when the years involved are different.

7.4 The definition of urban land under Section 2(ea) is merely clarificatory. The land in question is always within the limits of Ahmedabad Municipal Corporation.

7.5 The revenue does not dispute that the valuation of sub-plot No.417/1/1 was required to be determined at the option of the assessee in the manner laid down in Schedule III to the Act as on 1.4.1971. The real controversy is about the valuation of sub-plot Nos. 417/1/2 and 414/1/4 as on the relevant valuation dates i.e. 31st March of each of the years 1991 to 1994.

7.6 Valuation of the properties in question is a question of fact. The DVO's report was placed on record and the findings contained in the report were not challenged before the departmental authorities. Hence, it is not open to challenge the valuation in these appeals.

7.7 Insertion of the rules for valuation of assets in the Wealth-tax Act itself was for the purposes of valuing immovable property being a building or land appurtenant thereto and the same was applied to the valuation of the building and the land on which the bungalow is situate viz. sub-plot Nos.417/1/1/. The said rules would not be applicable to the other two plots.

STATUTORY PROVISIONS

8. Before considering the rival submissions, it is necessary to refer to the relevant statutory provisions. While the Wealth-tax Act at the time of its enactment provided for exemption in respect of one residential house belonging to the assessee in rural area, with passage of time, the restrictions about location of the house in rural area and about use of the house

exclusively for residential purposes came to be removed, but for almost two decades from AYs. 1964-65 to 1984-85 the exemption in respect of the house belonging to the assessee was restricted to rupees one lakh which was raised to rupees two lakhs for AY 1985-86.

For AYs 1986-87 to 1992-93, the assessee was entitled to exemption in respect of -

"one house or part of a house belonging to the assessee"

but the exemption was available within the overall ceiling limit of Rs.5 lakhs specified in Section 5(1A) in respect of several financial assets specified therein. This provision is, therefore, relevant for the appeals relating to AYs 1991-92 and 1992-93.

It appears that there was no exemption for a house for A.Y. 1993-94.

For the subsequent assessment years, the relevant provision is clause (vi) of Section 5 which, with effect from 1.4.1994, grants exemption for and from AY 1994-95 in respect of -

"one house or part of a house belonging to an individual or a Hindu Undivided Family".

For the period from 1.4.1976 to 31.3.1993, Section 5(ivc) granted a five year exemption to one or more dwelling units (each unit having a plinth area upto 80 sq.mts. and the land appurtenant thereto belonging to the assessee, where the construction of such unit is begun on or after 1.4.1976). The definition of "land appurtenant" in explanation (b) to this clause was very narrow (the minimum extent of land contiguous to the building required to be kept open as per building byelaws or in absence of such byelaws, one-third of the plinth area). However, it is not necessary to refer to clause 5(ivc) in the discussion as it is not the appellant's case that any such dwelling unit was constructed on the land/s in question after 1995 so as to give the benefit of exemption for A.Y. 1991-92 and 1992-93.

Wealth-tax is charged on the net wealth on the corresponding valuation date. Net wealth means the amount by which the aggregate value of all the assets belonging to the assessee on the valuation date is in excess of the aggregate value of all the debts owed by the assessee on the said date which have been incurred in relation to the said assets.

Section 2(ea) defines "assets" in relation to the assessment year commencing on 1.4.1993, or on any subsequent year as -

(i) any building or land appurtenant thereto (hereinafter referred to as "house") whether used for residential or commercial purposes ... .

(v) urban land ;

Explanation for the purpose of this clause -

(a) ....

(b) "urban land" means land situate -

(i) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation ...) ... ... and which has a population of not less than ten thousand ... ...; or

(ii) ... ... (regarding area outside the Municipal limits),

but does not include land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated or the land occupied by any building which has been constructed with the approval of the appropriate authority or any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him or any land held by the assessee as a stock in trade for a period of five years from the date of its acquisition by him.

The other relevant provision is Section 7 as introduced with effect from AY 1989-90 onwards which provides for determination of value of assets. Upto AY 1988-89, the value of the house was to be estimated to be a price which, in the opinion of the Assessing Officer, it would fetch if sold in the open market on the valuation date, subject to the provisions contained in the Rules in that behalf. However, Section 7 as amended with effect from AY 1989-90 and which is applicable to the four AYs in this group of appeals reads as under:-

SECTION 7 (OPERATIVE FOR AND FROM ASSESSMENT YEAR

1989-90)

[S.7 Value of assets how to be determined- (1) Subject to the provisions of subsection (2), the value of any asset, other than cash, for the purposes of this Act shall be its value as on the valuation date determined in the manner laid down in Schedule III.

(2) The value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date, may, at the option of the assessee, be taken to be the value determined in the manner laid down in Schedule III as on the valuation date next following the date on which he became the owner of the house or the valuation date relevant to the assessment year commencing on the 1st day of April, 1971, whichever valuation date is later;

**[Provided that where more than one house belonging to the assessee is exclusively used by him for residential purposes, the provisions of this sub-section shall apply only in respect of one of such houses which the assessee may, at his option, specify in his behalf in the return of net wealth].

** Proviso omitted by the Finance Act, 1992 w.e.f. 1.4.1993.

Explanation- For the purposes of this sub-section,-

(i) where the house has been constructed by the assessee, he shall be deemed to have become the owner thereof on the date on which the construction of such house was completed;

(ii) "house" includes a part of a house being an independent residential unit.

9. The statement of objects and reasons accompanying the Direct Tax Laws (Amendment) Bill, 1988 [174 ITR (Statutes) 126-128] which introduced Schedule III into the Wealth-tax Act, provided that "amendments are also required to incorporate the rules for valuation of assets in the Wealth-tax Act, so as to provide certainty in the

matter of assessment and reducing litigation on this account".

The reasons for incorporation of Rules for valuation of assets in the Wealth-tax Act itself are also explained in para 18.1 of Circular No. 559 dated 4.5.1990 containing explanatory notes to the provisions of the Direct Tax Law (Amendment) Act, 1989, but they do not throw any light on the specific controversy involved in these appeals.

Part B of the Rules (Rules 3 to 8) provides for valuation of immoveable property.

Rule 3 provides that the value of any immoveable property, being a building or land appurtenant thereto, or part thereof (acquired and constructed prior to 31.3.1974) shall be determined by multiplying the net maintainable rent by the figure 12.5 if the land belongs to the assessee.

Rule 4 provides that "net maintainable rent" is to be computed after deducting from the "gross maintainable rent" the amount of taxes levied by any local authority and a sum equal to 15% of gross maintainable rent.

Rule 5 provides the method for computing "gross maintainable rent" being the amount received or receivable by the owner as annual rent or the annual value assessed by the local authority, whichever is higher; where the house property is not let, the amount of annual rent assessed by the local authority.

Rules 6 and 7 provide for adjustments to the value arrived at.

Rule 8 enumerates the cases where the provisions of rule 3 for valuation of house property shall not apply. The valuation in such cases shall be done by the Assessing Officer in the manner laid down in Rule 20.

The relevant portion of Rule 8 to Schedule III to the Wealth-tax Act, 1957 reads as under :-

"8. Nothing contained in rule 3 shall apply,-

(a) where, having regard to the facts and circumstances of the case, the Assessing Officer, with the previous approval of the Deputy Commissioner, is of opinion

that it is not practicable to apply the provisions of the said rule to such a case; or

(b) where the difference between the unbuilt area and the specified area exceeds twenty per cent of the aggregate area; or

(c) ... ...

and in any case referred to in clause (a) or clause (b) or clause (c), the value of the property shall be determined in the manner laid down in rule 20."

Rule 20 reads as under:-

Valuation of assets in other cases.

20. (1) The value of any asset, other than cash, being an asset which is not covered by rules 3 to 19, for the purposes of this Act, shall be estimated to be the price which, in the opinion of the Assessing Officer, it would fetch if sold in the open market on the valuation date.

(2) Notwithstanding anything contained in sub-rule (1), where the valuation of any asset referred to in that sub-rule is referred by the Assessing Officer to the Valuation Officer under section 16A, the value of such asset shall be estimated to be the price which, in the opinion of the Valuation Officer, it would fetch if sold in the open market on the valuation date.

10. At the outset, we would consider whether Rule 8(ii) is attracted in the facts of this case. For this purpose, it is necessary to look at the following details as mentioned in the valuer's report (page 382 of the paper book):-

Area of Plot (excluding sub-plot No.3)	2465.00 sq.mts.
Total built-up area at G.Floor	411.00 sq.mts.
Unbuilt area is 2465 - 411 =	2054.00 sq.mts.
Specified area for Ahmedabad city	65%

Specified area is 2465 x 0.65 = 1602.25 sq.mts.

Excess of unbuilt area over
specified area
is 2054 - 1602.25 = 451.75 sq.mts.

451.75 sq.mt. as percentage of aggregate area

= 451.75 x 100 = 18.326%
2465

The excess of unbuilt area over specified area is less than 20% and, therefore, applicability of Rule 3 is not excluded.

D I S C U S S I O N

11. Mr Patel has relied on the decision of the Apex Court in Bharat Hari Singhania vs. CWT, (1994) 207 ITR 1 in support of his contention that "where there is a rule prescribing the manner in which a particular property has to be valued, the authorities under the Act have to follow it. It is not a matter of choice or option".

Mr Patel has also relied on the decision of the Calcutta High Court in Kalipada Ghosh vs. Tulsidas Dutt, AIR 1960 Cal. 467 in support of his contention that "house" or "dwelling house" should be taken to mean not only the structure or building, but also adjacent buildings, garden, court-yard, orchard, and all that it is necessary for the convenient occupation of the house and that it is not necessary for the members of the family or for one or more of them physically to occupy a house so as to make it a dwelling house. It is enough if the house or its appurtenances are used for the use or accommodation of servants, officers or guests of the family.

12. However, the observations of the Apex Court in Singhania's case (supra) were made in the context of valuation of unquoted equity shares under Rule 1D of the Wealth-tax Rules, 1957. The rule provided for only one method for valuing unquoted equity shares of a Company. In the instant case, the question is whether Rules 3 to 7 in Schedule III are to be applied only to sub-plot No.1 or also to two other sub-plots (i.e. sub-plot Nos. 2 and 4). Hence, the above decision has no relevance to the controversy at hand.

Similarly, the observations made by the Calcutta High Court in the case of Kalipada Ghosh (Supra) merely provide that house would include appurtenant land which is the clarification made by the amendment made by

Finance Act, 1992 by inserting clause (ea) in Section 2 of the Wealth-tax Act with effect from 1.4.1993. The decision, however, does not lay down any principle for determining as to how much land is to be considered as land appurtenant to a building. Such principles have, of course, been laid down in some judicial decisions with a rider that the tests suitable and appropriate to each case have to be devised in the facts of each case.

TESTS TO BE APPLIED

13. Mr Patel has heavily relied on the principles laid down by the Andhra Pradesh High Court in CIT vs. Zaibunnisa Begam, (1985) 151 ITR 320 and reiterated by the Madras High Court in CIT vs. M Kalpagam (1997) 227 ITR 733. However, those principles were laid down in the context of the expression "land appurtenant thereto" in Section 54 of the Income-tax Act, 1961 granting a concession where capital gains arise from the transfer of buildings or lands appurtenant thereto used by the assessee as his own or his parent's residence, if he constructs a house property or purchases one for the purposes of residence within the time specified in the provision. While those illustrative principles do give a lot of importance to use of the land as appurtenant land, before enumerating those principles and after setting them out, the Court sounded the following caveat:-

> "The tax authorities will have to determine the extent of land appurtenant to a building transferred, taking into consideration a variety of circumstances that may be relevant for the purpose. It is not possible to lay down infallible tests to be applied for the determination of the extent of land appurtenant to a building, as the tests vary depending upon the facts and attendant circumstances of each case. For instance :
>
> (1) to (5) ... ...
>
> The above tests are illustrative and by no means exhaustive. It is for the tax authorities to apply their mind properly to the facts of each case and to devise tests suitable and appropriate to each case."

(emphasis supplied)

14. If only the illustrative tests indicated in Zabunnissa Begam's cse, 151 ITR 320 were to be applied, there does not appear to be any material to dispute the appellant's case that the building together with the entire land of Final Plot No. 417/1 was used and enjoyed by the appellant and his family members occupying the building for residential purpose. As regards the area, since the area of sub-plot No.417/1/2 is 533 sq.mtrs. and so also the area of sub-plot No.417/1/4 is about 451 sq.mtrs., the Commissioner (Appeals) as well as the Tribunal held that each of the above plots could be put to independent user without causing any detriment to the enjoyment of the building as such on sub-plot No.417/1/1. Of course, on behalf of the appellant it has been contended that looking to the number of persons residing in the building including the appellant and his sons consistent with their social standing (appellant was at the relevant time an eminent doctor of the City of Ahmedabad), there will be no space left after considering the requirements of the appellant and his family. However, it cannot be overlooked that the appellant and his sons had themselves not only got the land sub-plotted in the year 1967, but had also gifted one of the four plots being sub-plot No.3 (admeasuring about 505 sq.mtrs.) to the appellant's daughters and that sub-plot No. 1 admeasured 1176 sq.mtrs. on which the bungalow was constructed with floor area of 351 sq.mtrs. (built up area of about 328 sq.mtrs. and a servants' room also on sub-plot No.1). In the controversy at hand, the pagi room (watchman's room) admeasuring 19 sq.mtrs. on sub-plot No.4 admeasuring 451 sq.mtrs. cannot be described as a house exclusively used by the appellant for residential purposes as contemplated by sub-section (2) of Section 7 for the purpose of valuation under Part B of Schedule III to the Act.

It is true that in Larsen & Tubro's case 1988 (4) SCC 260, it was observed that residential houses constructed in forties and fifties occupied large extents of land with the building surrounded by the garden, and the like. However, in that case, the Apex Court held it to be a question of fact and declined to disturb the finding of fact given by the Tribunal and the High Court. As observed in Zaibunnisa Begam's case (Supra), it is for the tax authorities to apply their mind properly to the facts of each case and to devise tests suitable and appropriate to each case. We must, therefore, now turn to the tests applied in the facts of the present case.

15. In the facts of the instant case, the Commissioner (Appeals) gave the following findings and the Tribunal has concurred with the same :-

The Commissioner (Appeals) has referred to the fact that Final Plot No.417/1 was sub-plotted into four plots in the year 1967 and that out of those sub-plots which were recognized in the Town Planning Scheme under the Town Planning Act, 1954 and that out of those sub-plots, the appellant had gifted sub-plot No.3 to his daughters who became absolute owners of the said sub-plot in the year 1968 and a residential bungalow was constructed exclusively on sub-plot No.1 having independent entries from a 80' wide TP road. No part of the said residential bungalow spilled over to other sub-plots. There was independent access for sub-plot Nos. 3 and 4 from a 30' wide TP road, while sub-plot No.2 was separately accessible from the 80' wide TP road. Hence, all the four sub-plots were residential and separately accessible from Town Planning roads and there was no need to cross over any of the sub-plots to reach another sub-plot. As per the building byelaws and FSI, residential bungalow can be constructed on each sub-plot. The Commissioner (Appeals) also considered the fact that although no corresponding residential units had come to be built on sub-plot Nos. 2 and 4 and there was no fencing to demarcate the sub-plots and actually one residential unit for the use of the appellant and his family had been built on sub-plot No.1, on a totality of the facts, sub-plot Nos. 2 and 4 cannot be treated as land appurtenant to the residential house of the appellant.

QUESTION NO.1 (Part I)

16. At this very stage, we may deal with the connected question No.1 (Part 1), whether the Tribunal had dismissed the appeal without taking into consideration the relevant material on record. While there can be no doubt, as held by the Apex Court in Omar Salay Mohamed Sait vs. CIT, (1959) 37 ITR 151 and in Udhavdas Kewalram vs. CIT, (1967) 66 ITR 462, that it is the duty of the Income-tax Appellate Tribunal to consider all facts and not to improperly reject the evidence and that where a finding is arrived at after improperly rejecting the evidence, its findings even though on questions of fact will be liable to be set aside by a Court. However, as observed by the Apex Court in CIT vs. Karam Chand Thapar & Bros.P.Ltd., (1989) 176 ITR 535, the decision of the Income-tax Appellate Tribunal has not to

be scrutinized sentence by sentence merely to find out whether all facts have been set out in detail by the Tribunal or whether some incidental fact which appears on the record has not been noticed by the Tribunal in its judgement. If the Court, on a fair reading of the judgment of the Tribunal, finds that it has taken into account all relevant material and has not taken into account any irrelevant material in basing its conclusions, the decision of the Tribunal is not liable to be interfered unless the conclusions are perverse, in
...

facts before the Tribunal could have come to the conclusion to which it has come. Now turning to the so-called omissions on the part of the Tribunal -

16.1 We would first refer to the proceedings under the Urban Land Ceiling Act relied upon by the appellant himself, indicating how the appellant and his family members treated the lands in question. In the declaration form filed by the appellant and his sons under the ULC Act, the following particulars were given in the Appendix at Page 107 of the Paperbook :-

APPENDIX

User of Land	Price	Persons having interest in land	Building in the land (whether used for residence)
Non-agricultural	3 lakhs (Rs.)	650 sq.yds. plot of Dr KM Shah 650 sq.yds. plot of daughters 1200 sq.yds. of Bhadresh	used for residence

Kantilal Shah

1000 sq.yds. of Dr
Mrugesh Kantilal Shah

The above details are given in respect of the land bearing Final Plot No.417/1 in TP Scheme No.3, admeasuring 3500 sq.yds. (Similar particulars are given in Appendix G to the Form at page 136 of the paper book).

The appellant claimed in the appeal memo before the appellate authority under the ULC Act that the land had three residential units with land admeasuring 500 sq.mtrs. appurtenant to each of them. The appellant and his family members claimed 500 sq.mtrs. of appurtenant land for the bungalow, another appurtenant land of 500 sq.mtrs. for pagi's room and another 500 sq.mtrs. of the appurtenant land for servant's room in order to show that there was no excess vacant urban land. Having succeeded before the ULC authorities on that basis, the appellant is bound by the statements made in the Appendix to Form No. I under Section 6 of the ULC Act and in the appeal memo. Hence, the order of the Tribunal or the order of the Commissioner (Appeals) are not liable to be disturbed merely because they did not make a specific reference to the material under the ULC Act which in any case destroys the appellant's case that sub-plot Nos. 2 and 4 are appurtenant to the residential bungalow and that the entire land admeasuring about 2900 sq.mtrs. is only one unit.

The above peculiar features of the case very much militate against the appellant's case that the appellant had always treated the entire unbuilt land in final plot No.417/1 as land appurtenant to his residential bungalow.

16.2 The learned counsel for the appellant has heavily relied on the decision of this Court in CWT vs. Shrenik Kasturbhai decided on 10.10.1995. On the basis of the said decision, it is submitted that when the servants are residing in the quarters which are on a part of the land in question, they have to be treated as the part of the same residential property. It is submitted that the residence does not mean mere occupation by the assessee, but includes the house appended with all necessary requirements for comfortable living including presence of servants. For proper enjoyment of house by the assessee and members of his family as residence, for the purpose of house hold requirements and maintenance of house,

servants are required to be engaged and they are allowed to remain on the premises for the purpose of convenient use of the property by its occupants.

The aforesaid observations were made when the Court was called upon to consider the question whether occupation of a part of the house by the servants of the owner can disentitle the owner of the house from claiming the benefit of erstwhile sub-section (4) of Section 7 which came to be substituted by the present sub-section (2) w.e.f. 1.4.1989. The contention of the revenue in that case was that because the servants were residing in the quarters which was being treated as a part of the house, the house was not exclusively used by the owner/assessee for residential purposes. The contention of the revenue, therefore, was that since some other persons were also occupying a part of the house, the assessee was not exclusively using the house himself for residential purposes. It was in this context that the Court observed that it would be unthinkable to suggest that exclusive use by the assessee for residential purpose would mean occupation by the owner himself and would not include the members of the owner's family or user in a manner spelling out usual ancillary appendages necessary for comfortable living like quarters for servants. This decision would have helped the assessee if final plot No.417/1 was not sub-plotted into four sub-plots. Apart from this aspect, even in the form and the appeal filed under the ULC Act, the appellant had shown separate appurtenant land for the servant's room and separate appurtenant land for the pagi's room over and above the appurtenant land for the residential bungalow. The above two features are sufficient to distinguish the fact situation from the case of Shrenik Kasturbhai.

16.3 The appellant had produced the tax bills issued by the Ahmedabad Municipal Corporation (pages 383 to 392 of the paper book) to indicate that the Corporation had treated the entire property as having only one number i.e. 417/1. However, in view of the fact that there was only one building constructed on sub-plot No.1 of Final plot No.417/1 and that sub-plot Nos. 2, 3 and 4 had always remained open lands and the Corporation has no power to levy tax on open land, nothing turns upon the Corporation bills not giving sub-plot number for the building in question. The Corporation itself had sanctioned the construction plans in the year 1968 for construction of a residential house admeasuring 345.88 sq.mtrs. on sub-plot No.1 of FP No.417/1. In fact, the bill at page 390 for the year 1992-93 shows the area of

construction as 345.88 sq.mtrs., whereas the bill at page 391 for the year 1993-94 and bill at page 392 for the year 1995-96 show the area of construction as 121.34 sq.mtrs. The bill at page 389 for the year 1990-91 does not show any such area. But in all the four bills, the annual rating value is shown as Rs.5226/-. Similarly, the bills for the years 1980-81 and 1981-82 indicate the same FP no. 417/1 with net valuation of Rs.4484/-, but in all these bills the address of the appellant is shown as "Nursing Home Surgical Hospital, Dinbai Tower, Mirzapur Road, Ahmedabad". Similarly, the bills issued for the year 1977-78 for the building on FP NO.417/1 (pg.383) does not detract from the revenue's case that sub-plot Nos. 2 and 4 were capable of being treated as independent plots.

17. In view of the above discussion, the material relied upon by the appellant does not carry the appellant's case any further.

QUESTION NO.1 (Part II)

18. Now coming to the second part of question No.1, whether the order of the Tribunal is a speaking order, we have perused the order of the Income-tax Appellate Tribunal. It is true that the reasons given by the Tribunal are quite brief and not as elaborate as the appellant would have liked to have. On the question whether sub-plot Nos. 2 and 4 were land appurtenant to the appellant's house, the Tribunal has given its findings in the following words :-

"We have carefully gone through the orders of authorities below as well as on various details and documents placed before us at the time of hearing. The sub plot os. 417/1/1, 417/1/2 & 417/1/4 are, in our opinion, independent residential plots on which as per approval of Municipal Corporation independent residential house can be built up. We are, therefore, of the opinion that the learned CIT(A) is fully justified in holding that assessee is entitled to exemption u/s.5(1)(iv) and or u/s.5(vi) of the W.T. Act in respect of bungalow constructed on plot No.417/1/1. The remaining two sub-plots namely plot No.417/1/2 and 417/1/4 cannot be treated as land appurtenant to even as per principle laid down by Hon'ble Madras High Court and Madhya Pradesh High Court (supra). On this remaining plots independent bungalows/residential

> house can be built, these are having separate approach roads, duly approved by Municipal Corporation as plots for separate residential units. Therefore, in our opinion, learned CIT(A) is fully justified in holding that these two sub-plots are urban land within the meaning of W.T. Act. Looking to the totality of the facts and circumstances of the case and reasons recorded by learned CIT(A) in her impugned order. We are of the opinion that her order is legally and factually correct and no interference is called for. We, therefore, decline to interfere."

In State of Madras vs. AR Srinivasan, AIR 1966 SC 1827 and Tara Chand vs. Delhi Municipality, AIR 1977 SC 567, it has been held that it may be necessary for an appellate authority to give detailed reasons in support of its order if it differs from the lower authority, but when the appellate authority merely gives an order of concurrence, it need not contain such elaborate reasons. An order does not cease to be a speaking order merely because it is brief and not elaborate.

In the instant case, the Tribunal has considered the relevant material and has highlighted the important features of the case and has given reasons to show its agreement with the Commissioner (Appeals). Hence, it cannot be said that the order of the Tribunal is not a speaking order.

Since in the context of the above findings of fact given by the Commissioner, the order of concurrence or affirmance passed by the Tribunal cannot be said to either perverse or non-speaking, our finding on the second part of question No.1, therefore, is that on the facts and circumstances of the case, it cannot be said that the Tribunal dismissed the appeal of the appellant without any speaking order on merits.

19. In view of the above discussion and the discussion in relation to question No.1, our finding on the second part of question No.1 is also in the negative i.e. in favour of the revenue and against the assessee.

QUESTION Nos.2 & 3

20. The learned counsel for the appellant has made an attempt to urge that since building was constructed on land bearing Final Plot No. 417/1, it cannot be said that the land appurtenant thereto was urban land so as to fall under the definition of "assets" as contained in Section 2(ea)(v)(b). It is also submitted that in any view of the matter such definition was not provided for the period prior to 1.4.1993 and, therefore also, the land in question cannot be considered to be urban land.

Clause (ea) inserted in Section 2 by Finance Act 1992 with effect from 1.4.1993 merely clarified the definition of "urban land" which was even otherwise includible in the assets as defined by clause (e) in Section 2 of the Act because clause (e) defines "assets" as under :-

"assets" includes property of every description, movable or immovable, but does not include,-
... ..."

"Urban land" was not excluded from the said definition and, therefore, nothing turns upon absence of the definition of urban land for AYs. 1991-92 and 1992-93. Even for AYs 1993-94 and 1994-95, urban land includes lands situate in any area which is comprised within the jurisdiction of the Municipal Corporation which has a population of not less than ten thousand. The land was always within the limits of the Ahmedabad Municipal Corporation since the date of purchase thereof by the appellant in the year 1954.

21. As regards the last portion of the definition of urban land which excludes the land on which construction of a building is not permissible or the land occupied by any authorised building, there is nothing on record to show that construction of a building was not permissible on sub-plot Nos. 2 and 4. In fact, the Commissioner (Appeals) has given a finding, and the Tribunal has not disturbed the same, that each of the sub-plot Nos. 2 and 4 was capable of having a building constructed on it. As far as the land occupied by any building is concerned, sub-plot Nos. 2 and 4 did not have any construction except a small pagi room (watchman room) admeasuring 19 sq.mtrs. on sub-plot No.4 and, therefore, at the most the land below the said room would have to be excluded while making valuation of the land. Part-B of Schedule III to the Act applies to any immovable property being a building or land appurtenant thereto or part thereof. Once the appellant's case that sub-plot Nos.2 and 4 are

land appurtenant to the residential bungalow on sub-plot No.1 is not accepted and sub-plot Nos.2 and 4 are found to fall within the definition of "urban land", these lands are liable to be included in the assets for the purpose of computation of net wealth.

22. In view of the above discussion, the Tribunal has not substantially erred in law in interpreting the provisions of the Wealth-tax Act with regard to definition of "Urban Land" in Section 2(ea) and Explanation (b) to Section 2(ea) which stipulates that the area of land occupied by a building does not form part of Urban Land.

23. Having carefully considered the principles laid down in various decisions cited by the learned counsel for the parties and applying the same to the facts involved in these appeals and the findings given by the Commissioner (Appeals) and the Tribunal, although if the test of user of the land were to be applied, the appellant had some case, in view of the manner in which the appellant himself had sub-plotted the land into four sub-plots, put up construction on only sub-plot No.1, gifted sub-plot No.3 to the appellant's daughters and stated in no uncertain terms before the authority under the Urban Land Ceiling Act that the property of the appellant and his two sons consists of three residential plots in Final Plot No.417/1 and the finding given by the Commissioner (Appeals) that each sub-plot has an access from one or the other of the Town Planning roads and that each plot is capable of having construction put up on it, we are of the view that it cannot be said that the Tribunal has erred in law in confirming the finding given by the Commissioner (Appeals) and the Assessing Officer that the lands in question being sub-plot Nos. 2 and 4 are separate lands and are not to be considered as land appurtenant to the building on sub-plot No.1. Hence Part-B of Schedule III to the Act applicable to a building or land appurtenant thereto is not applicable to the said lands. Accordingly, question No.3 will also have to be answered against the assessee. In the facts and circumstances of the case, the Tribunal did not substantially err in law in rejecting the contention of the assessee that the value of sub-plot Nos. 2 and 4 was required to be determined at the option of the assessee in the manner laid down in Schedule III to the Act as on 1.5.1971.

RES JUDICATA AND PENALTY

24. As regards reliance placed by the learned counsel

for the appellant on the valuation of the property in question from 1971 to 1990, it is true that the valuation placed by the assessee on the entire Final Plot No. 417/1 on the basis of the provisions contained in Part B of Schedule III to the Rules was accepted by the revenue for almost 20 years. However, as per the settled legal position, there is no res judicata in tax matters when different years are involved [vide Dwarkadas Kesardeo Morarka vs. CIT, (1962) 44 ITR 529 (SC) and Joint Family of Udyan Chinubhai vs. CIT, (1967) 63 ITR 416 (SC)].

Even while rejecting the appellant-assessee's contention based on the assessments in the previous years, considering the fact that in all the previous years the assessee had applied the user test and the department did not find fault with the same and that although on an overall consideration of the relevant tests applied, the Tribunal as well as this Court have come to the conclusion that the assessee was not justified in valuing all the sub-plots as part of the house, there is considerable substance in the submission made by Mr Patel for the assessee that the case does not warrant imposition of penalty under Section 18 of the Act. Since only the user test was applied all along for the last 20 years, the assessee was not guilty of concealment of the particulars of any assets nor had the assessee furnished inaccurate particulars of any assets. The entire land bearing Final Plot No. 417/1 with the building constructed thereon was offered for valuation under the Wealth-tax Act. Hence, we are of the view that no case is made out by the revenue for imposition of penalty on the appellant for any of the assessment years involved in these appeals.

QUESTION No. 4

25. Even while holding that the lands in sub-plot Nos. 2 and 4 are required to be valued independently for the purposes of the Wealth-tax Act, we do find considerable substance in the submissions made by Mr Patel for the appellant about substantial errors of law committed by the department in valuing sub-plot Nos. 2 and 4 for the relevant years. On going through the material on record and the relevant building byelaws which are statutory, we are of the view that there is considerable force in the submission made by Mr Patel that sub-plots Nos. 2 and 4 admeasuring only 533 sq.mtrs. and 451 sq.mtrs. respectively by themselves would not have been purchased for construction of a commercial complex or a shopping centre because under the building byelaws of the Municipal Corporation, such

commercial complex/shopping centre can be constructed only on a land within an area of atleast 1000 sq.mtrs.

26. It is true, as contended by the learned counsel for the revenue, that the report of the DVO was not challenged before the Commissioner and the Tribunal. In CIT vs. Scindia Steam Navigtion Co. Ltd., (1961) 42 ITR 589, the Constitution Bench of the Hon'ble Supreme Court enunciated several principles relating to the nature of the jurisdiction of the High Court under Section 256, one of which is as under :-

> "Section 66(1) speaks of a question of law that arises out of the order of the Tribunal. Now a question of law might be a simple one, having its impact at one point, or it may be a complex one, trenching over an area with approaches leading to different points therein. Such a question might involve more than one aspect, requiring to be tackled from different standpoints. All that section 66(1) requires is that the question of law which is referred to the court for decision and which the Court is to decide must be the question which was in issue before the Tribunal. Where the question itself was under issue, there is no further limitation imposed by the section that the reference should be limited to those aspects of the question which had been argued before the Tribunal. It will be an over-refinement of the position to hold that each aspect of a question is itself a distinct question for the purpose of section 66(1) of the Act."

Moreover, the limitations on the powers of this Court while hearing a reference under Section 256 do not apply while hearing an appeal under Section 260A of the Act.

Hence, we frame question No. 4 for our determination as under :-

> "Whether on the facts and in the circumstances of the case, the Tribunal substantially erred in law in accepting the valuation of sub-plot Nos. 2 and 4 made in disregard of the statutory building byelaws of the Ahmedabad Municipal Corporation ?"

27. Now, we proceed to deal with the said question. The relevant building bye-law of the Ahmedabad Municipal Corporation reads as under :-

IV

MINIMUM AREA OF A BUILDING UNIT

The development on a building unit shall be controlled on the basis of its area and the minimum area of a building unit required for various buildings shall be as under:-

(1) 200 sq. metres (240 sq. yds.) for one domestic unit.

(2) 300 sq. metres (360 sq. yds.) for two semi detached domestic building unit.

(3) 333 sq. metres (400 sq. yds.) for three semi-detached buildings of workshop and small factories, dispensary, post-office, bank, maternity homes and infants' school.

(4) 500 sq. metres (600 sq. yds.) for three semi-detached domestic units and detached or semi-detached buildings, for retail shops, hotel, restaurant, domestic flour factory, community hall and wadi.

(5) 665 sq. mts.(800 sq. yds.) for four semi-detached domestic units and for detached or semi-detached ownership tenement flats.

(6) 1000 sq. mts. (1200 sq. yds.) for detached or semi-detached buildings for shopping centres, petrol pumps with or without service stations and motor repairing garages, primary schools and kindergarten.

Explanation : "Primary School" shall mean schools upto Std. VII.

(7) 1500 sq. mts. (1800 sq. yds.) for detached or semi-detached buildings for hostels, tenement buildings, lecture-halls and high-rise buildings.

(8) 2000 sq. mts. (2400 sq. yds.) for detached or semi-detached buildings for colleges and high schools.

28. Sub-plot No. 2 admeasuring 533 sq.mtrs. is on the Southern side of the sub-plot No.1 having residential bungalow and sub-plot No.4 admeasuring 451 sq.mtrs. is on the Northern side of the said bungalow. Hence, sub-plot Nos. 2 and 4 could not have been jointly sold without sub-plot No.1. Since sub-plot No.1 has been rightly assessed separately under sub-section (2) of Section 7 on the basis of its value as on 31st March 1971, sub-plot Nos. 2 and 4 have to be valued independently as independent sub-plots without the potential to be used as land for commercial complex. In the facts of this case, while valuing the land under the provisions of the Wealth-tax Act, it was not open to the revenue in hindsight to apply the market rate of land available for constructing a commercial complex or a shopping centre, merely because all sub-plots Nos.1 to 4 of the land in question were purchased simultaneously for constructing a commercial complex in the year 1996. It appears that many of the instances relied upon by the Valuation Officer appear to be instances of land which were sold and specifically used for construction of commercial complexes. It is also necessary to note that while valuing the two separate parcels of land being sub-plot Nos. 2 and 4, the valuation is to be placed on the basis of the sale price which a willing purchaser would pay looking to the shape and location of the land. With the residential bungalow admeasuring 351 sq.mtrs. in the middle of FP No.417/1 and looking to the shape of sub-plot Nos. 2 and 4 neither the purchaser of sub-plot No. 2 nor the purchaser of sub-plot No.4 would have paid the market price which a plot admeasuring 451 sq.mtrs. or 533 sq.mtrs. in regular shape would have fetched.

It appears to us that the Department was quite swayed by the price that the entire land bearing final plot No.417/1 fetched in the year 1996 and, therefore, the aforesaid relevant considerations were not taken into account.

29. In view of the above discussion, we are of the view that although the valuation made by the departmental valuation officer was not challenged before the Tribunal as the appellant had concentrated on his case that FP No.417/1 was one single unit and that all the lands surrounding the residential bungalow were appurtenant to the said residential bungalow, in view of the statutory building byelaws and the facts about the location and shape of sub-plot Nos. 2 and 4, we are of the view that the valuation of said sub-plot Nos. 2 and 4 is required to be made afresh in accordance with law and in light of

the observations made hereinabove.

30. In the result, we allow all the four appeals. The judgment and order of the Tribunal are set aside.

I The matters are remanded to the Tribunal after giving the following FINDINGS:-

(i) In so far as the Tribunal has held that sub-plot Nos.2 and 4 of Final Plot No.417/1 are not lands appurtenant to the building constructed on sub-plot No.1 thereof, the order of the Tribunal under challenge in these appeals cannot be said to be an order which is not a speaking order nor can it be said that the Tribunal erred in dismissing the appeal without taking into consideration the relevant material on record.

(ii) It cannot be said that the Tribunal erred in law in interpreting the provisions of the Wealth-tax Act with regard to definition of "Urban Land" in Section 2(ea) and Explanation (b) to Section 2(ea) which stipulates that the area of land occupied by a building does not form part of Urban Land.

(iii) In the facts and circumstances of the case, the Tribunal did not err in law in rejecting the contention of the assessee that the value of sub-plot Nos. 2 and 4 was required to be determined at the option of the assessee in the manner laid down in Schedule III to the Act as on 1.5.1971.

(iv) The valuation of sub-plot Nos. 2 and 4 on the relevant dates made by the Department is not in accordance with law and fresh valuation is required to be made.

II DIRECTIONS

(a) The Tribunal shall reconsider the question of valuation of sub-plot Nos. 2 and 4 on the relevant valuation dates involved in these four appeals after

calling for a fresh valuation report from the Departmental Valuation Officer who shall be directed to revalue sub-plot Nos. 2 and 4 of Final Plot No. 417/1 after giving the appellant-assessee an opportunity of being heard and also leading evidence, if any, and in light of the observations made in paragraphs 25 to 29 of this judgment.

(b) After receiving the report of the Departmental Valuation Officer as aforesaid, the Tribunal shall hear the appeals afresh in accordance with law and in light of the findings recorded and the observations made in this judgment.

31. The appeals are accordingly disposed of in terms of the aforesaid findings and directions.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)

zgs/sundar-